GOVERNMENT OF MYSORE

FOOD, CIVIL SUPPLIES & LABOUR DEPARTMENT

Labour Dispute.—Industrial Dispute between the workmen and the management of Davangere Cotton Mills Limited, Davangere.

Award of the Additional Industrial Tribunal, Bangalore, published

Read the following Papers.—

(1) Letter No. AID 1102/72-73 dated 21st November, 1972 from Sri K. N. Patil, Presiding Officer, Additional Industrial Tribunal, Bangalore.

BEFORE THE ADDITIONAL INDUSTRIAL TRIBUNAL, BANGALORE.

Dated this the 20th day of November, 1972

PRESENT

SRI K. N. PATIL, LL.B., *Presiding Officer*

A.I.D. No. 15/1971

I Party.—

Workmen represented by the Secretary, Davangere Cotton Mills Employees Association, Davangere.

Vs.

II Party.—

The Management of Davangere Cotton Mills Ltd., Davangere.

Appearances :

For the I Party.—Sri M. C. Narasimhan, Advocate, Bangalore.

For the II Party.—Sri S. R. Krishnamurthy, Law Officer, The Southern India Mill Owners' Association, Coimbatore.

AWARD

The Government of Mysore being of opinon that an Industrial Dispute existed between the workmen and the Management of Davangere Cotton Mills Ltd., Davangere, with regard to the amendment of Gratuity Scheme in force in the mills, referred the said dispute to the Industrial Tribunal at Bangalore for adjudication under Section 10(1)(d) of the Industrial Dispute Act, under their No. FCL 118 LLD 70, dated 24th March 1970. The point of dispute enumerated in the order of reference is :

> "Is the Davangere Cotton Mills Employees' Association Davangere justified in demanding the amendment of the gratuity scheme in force in the Davangere Cotton Mills, Davangere, as detailed in the Association's letter No. 42/67 dated 1st August 1967 addressed to the Managing Agents of the said Company (*Vide* Copy enclosed).

Copy of letter No. 42/67 dated 1st August 1967 of the Assistant Secretary, the Davangere Cotton Mills Employees Association, Davangere, addressed to the Managing Agents, Davangere Cotton Mills Ltd., Davangere, under copy to the Assistant Labour Commissioner, Mysore.

This is to inform you that the executive committee of our Association has decided to place the following demands by way of an amendment to the gratuity scheme now in force.

Davangere Cotton Mills Gratuity Scheme :

(1) Clause 2(b) of the Davangere Cotton Mills gratuity scheme defining employee shall be amended as follows :

Employee means any worker under the D.C.M. Ltd., as defined in the Industrial Disputes Act, 1947.

(2) Clause 2(c) of the D.C.M. Gratuity Scheme defining ' Basic Wages ' shall be amended as follows :

" Basic wages means the Basic wages on the date on which the employee's services with the company comes to an end on account of death, disability, retirement resignation or abandonment or termination or for any reason whatsoever."

(3) Clause 2(d) shall read as follows :

" *Continuous Service* " Means serivce continuous without a break not exceeding six months ; provided that the service shall be counted from the date of joining the company whether as a probationer of apprentice or temporary or Badli workmen. Add proviso at the end of clause 2 (f) " provided the employee may change no nominee or any nominate more than one person."

(4) *Re* : Clause 4 of the Scheme : The following changes may be incorporated ; Instead of 4(a) the following shall be inserted :

" On his death while in the service of the company or on termination of his services by the company ' for whatsoever reason or on his becoming physically or mentally incapacitated for further service ' or on his reaching the age of 60 years.

One months basic wages for each completed year of service subject to a maximum of 20 months basic wages to be paid to him or his nominee/ nominees as the case may be."

Explanation.—A certificate produced by the employee from any Registered Medical Practitioner competent to issue a certificate under any law for the time being in force shall be deemed sufficient for ascertaining whether the employee is physically or mentally incapasitated to continue in service.

(5) In clause 4(b) for the words "or resignation of an employee after 15 years continuous service" substitute "Resignation or abandonment after 10 years of continuous service" and delete "on voluntary retirement".

(6) Delete Clause 4(c), 5 and 6 and 8.

The above amendment shall be effective from the date of this letter.

We request you to kindly concede the above demand.

The changes proposed are reasonable and fair.

We request you to effect immediately. We are however prepared to discuss the issue and come to a reasonable settlement.

Hoping to hear at an early date.

Thanking you."

(2) After the receipt of the reference it came to be numbered as I.D. 5/70 on the file of the Industrial Tribunal, at Bangalore. Later, the Government by their order No. FCL 277 LLE 70 dated 23rd August 1971, withdraw the proceedings from the file of the Injdustrial Tribunal under Section 33-B of the Industrial Disputes Act and transferred it to this Tribunal for disposal. The case was thereafter numbered as A.I.D. 15/71 on the file of this Tribunal.

(3) The I party consists of the workmen of Davangere Cotton Mills, represented by the Secretary, Davangere

Cotton Mills Employees Association, Davangere. The II Party consists of the Management of the Mills. The I Party has filed its statement of claims on 6th May 1970 and raised these demands The II Party is a well established textile Mill engaged in the manufacture of cloth and yarn. It employs about 2,000 workmen and has a branch factory at Gadag. In 1965, the II Party Mills, in pursuance of an agreement between the workmen and the Management, introduced a gratuity scheme called the Davangere Cotton Mills gratuity scheme. The scheme in force was found to be disadvantageous in several aspects. Hence, after taking all necessary steps the I Party Association made a demand for change in the scheme as indicated in the order of reference. The demand was not acceeded to by the II Party. Conciliation proceedings were held and they ended in failure. The Government in the first instance, was not inclined to refer the dispute for adjudication; However, the matter was taken up for a review and the Government by their order dated 24th March 1970 were pleased to refer the dispute for adjudication.

(4) The demands for the amendment of gratuity scheme are just and reasonable. There are material changes in relevant circumstances since 1965. The definition of employees is inadequate For the purposes of calculation of gratuity the wages drawn by the employee on the date of entitlement to gratuity would be material. The definition of 'continuous service" in the existing gratuity scheme does not follow the standard pattern. The definition as given in the Industrial Disputes Act cannot have any application for the purposes of gratuity. Clauses 4, 5 and 6 in the gratuity scheme are not based on the usual pattern. Clause 4 of the gratuity scheme is onerous and burdensome. One should be entitled to gratuity after he puts in 5 years of service and not 10 years of service. The rate of gratuity should be one month's wages for every completed year of service. The other changes demanded are consequential. An Award may be passed allowing the claims of the workmen.

(5) The II Party has filed its counter on 30th June, 1970. It has raised these contentions : A gratuity scheme was introduced in the Mills by an agreement between the workmen and the Management in 1965. Since the introduction of the scheme, conditions have not changed to warrant any alteration. The scheme of gratuity must be on a long-term basis and is not to be changed often. While adjudicating on gratuity scheme, the Tribunal will have to take into consideration, the financial condition of the employer, his profit making capacity, the profits earned by him in the past as reserves. The condition of the Cotton Textile Industry has deteriorated during the last several years. In I. D. No. 172/66 on the file of the Industrial Tribunal, Bangalore, observations have been made regarding the financial capacity of the II Party Mills to the effect that the Mills are facing terribly adverse conditions and that its fortunes are declining. On 1st August 1967, the I Party Association made a demand for the amendment of the Scheme of Gratuity. The II Party did not acceed to the request and sent a reply on 1st September 1967. The demand was conciliated upon and the failure report was submitted to the Government. The Government by their order dated 19th July 1968 refused to refer the dispute for adjudication. There was no reason, however, for the Government to make the present reference. In view of these facts the reference is not maintainable. The financial conditions of the II Party Mills are not encouraging. There are no proper reasons to grant the amendments, to the gratuity scheme as prayed for by the I Party Association. The claims of the I Party Association are not capable of being adjudicated upon. There is no justification in the demands made by the I Party and hence the reference may be rejected.

(6) The I Party Association has filed the reply statement on 22nd July 1970, and reiterated its demands put forth in its statement of claims and denied the objections raised by the II Party.

(7) On 3rd September 1970, the Industrial Tribunal raised the following issues in addition to the points of dispute :

(i) Whether the reference order is not maintainable and is without jurisdiction ?

(ii) Whether the amended scheme of gratuity adds a burden which the Industry cannot bear ?

(iii) Whether the definition of "continuous service" in the existing scheme is unreasonable ?

(iv) Whether columns 4, 5 and 6 of the existing scheme are not in line with the usual pattern of gratuity and are unfair and unjust ?

(v) Whether there is any call for amendment in the existing scheme of gratuity ?

(8) This is a reference made by the Government of Mysore under Section 10(1) (d) of the Industrial Disputes Act for adjudication with regard to the dispute that has arisen between the workmen and the Management of Davangere Cotton Mills Ltd., Davangere, with regard to the amendment of Gratuity Scheme in force in the Mills. A certain scheme, which is called the Davangere Cotton Mills Gratuity Scheme is in force in the Mills. On 1st August 1967 the Employees' Association of the Mills requested the Management to amend the Scheme and that request was refused. The matter was taken up in conciliation and the conciliation failed. A failure report was submitted by the Conciliation Officer to the Government. The Government came to the opinion that an Industrial Dispute existed between the workmen and the Management of the Mills and as such, referred the dispute for adjudication. The order of reference was passed on 24th March 1970. The date of demands by the employees Association is 1st August 1967. This case was originally pending before the Industrial Tribunal, Bangalore. The Government by their order dated 23rd August 1971 withdrew the proceedings from the file of the Industrial Tribunal and transferred it to this Tribunal for disposal. During the pendency of the case, the payment of Gratuity Act, 1972 came to be passed by the Parliament. It has also come into force from 16th September 1972. According to the provisions of the payment of Gratuity Act, 1972 an employee is entitled to the payment of Gratuity, on the termination of his employment, if he has rendered

continuous service for not less than 5 years. He would be entitled to gratuity on his superannuation, retirement, resignation, death or disablement due to accident or disease. The amount of gratuity to which an employee would be entitled under the Act would be at the rate of 15 days' wages, based on the rate of wages last drawn by the employee concerned, for every completed year of service. The maximum amount of gratuity to which an employee would be entitled will be 20 months' wages. "Wages as defined under the Gratuity Act means all emoluments earned by an employee and includes D.A. It does not include Bonus, Commission, H.R.A., Overtime wages and any other allowance. We thus find that during the pendency of this case the Payment of Gratuity Act has been passed which has come into force from 16th September 1972 and according to which an employee is entitled to grauity at the rate of 15 days wages for every completed year of service and wages include basic pay plus D.A.

(9) I have mentioned above the advantages to which an employee is entitled under the Payment of Gratuity Act, 1972. That Act has already been placed on the Statute Book. Under the Davangere Cotton Mills Gratuity Scheme, an employee was entitled to gratuity at the rate of ½ months basic wages. We thus find that the provisions of the Payment of Gratuity Act are more liberal and advantageous to the workmen of the I Party rather than the provisions under the Davangere Cotton Mills Gratuity Scheme. But the learned Counsel appearing for the I Party contended that the question of application of the amended scheme could be taken advantage of by those persons who retire after 1st August 1967 and prior to 16th September 1972. The question in that aspect would be as to the amendment being made applicable either from the date of demands, the date of reference or the date of award. If the amendments are to come into effect from the date of award then nobody can take benefit of the amendments for the reason that earlier to the Award the Gratuity Act which has more liberal provisions has been passed and has also come into effect.

(10) I shall proceed to consider the various amendments put forth the Gratuity Scheme, one after other. The first amendment refers to Clause 2(b) of the Scheme concerning the definition of an employee. According to the Gratuity Scheme the definition of an employee is :

> " Employee means any workman as defined in the Factories Act, 1948."

The proposed amendment is :

> " Employee means any worker under the D.C.M. Ltd., as defined in the Industrial Disputes Act, 1947."

According to the scheme an employee is a workman, as defined in the Factories Act. The workman now wants that it should be so amended as to include within the definition of an employee under the Industrial Disputes Act.

(11) The Factories Act defines a worker in Section 2 (1) as :

> " Worker means a person employed, directly or through any agency whether for wages or not, in any manufacturing process or cleaning any part of the machinery or process or in any other kind of work incidental to, or connected with, the manufacturing process or the subject of manufacturing process. "

The workman is defined under Section 2(s) of the Industrial Disputes Act as :

> " Workman " means any person (including an Apprentice) employed in any Industry to do any skilled or unskilled manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceedings

under this Act in relation to an Industrial Dispute, includes any such person who has been dismissed, discharged or retrenched in connection with the or as a consequence of that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, does not include any such person."

(12) If we go through the definition of a worker under the Factories Act and a workmen under the Industrial Disputes Act, we find the difference only to the extent of including an apprentice. The Industrial Disputes Act wants to include an apprentice in a workman while it is not to be found under the Factories Act. All that the I Party wants by this amendment is that even an apprentice should be included in the definition of a workman and the period of apprenticeship should be counted for calculating the service for enablement of gratuity. But we find that even under the Payment of Gratuity Act, which defines an employee under Section 2(c) of the said Act, an apprentice is excluded from the definition of an employee. An apprentice is governed by certain rules and conditions. He is learner. He is not expected to give production. On the other hand the management of the concern where he works as apprentice is expected to spend for him to teach him work. He cannot be called a workman. An apprentice is not included within the definition of a workman so far as the Gratuity Act is concerned. But the Industhial Disputes Act wanted to give the status of a workman even to an apprentice and include him within definition of a workman. I would therefore, find no plausible reasons to include an apprentice within the definition of a workman. The proposed amendment cannot therefore, be allowed.

(13) Clause 2(c) of the DCM Gratuity Scheme is also sought to be amended. It pertains to basic wages. The scheme defines basic wages as :

"Basic wage means the average of the basic wages paid during 12 months proceding 31st December

1959 for the services upto 31st December 1959 and the average of the basic wages (excluding the D.A. consolidated or merged with the basic wages either by agreement settlement or award or by legislation) paid to an employee during the 12 months preceding death, disability, retirement, resignation or termination of service for the services from 1st January 1960."

The I Party wants the above mentioned definition of basic wages to be amended as :

"Basic wages means the Basic wages on the date on which the employees services with the company comes to an end on account of death, disability, retirement, resignation or abandonment or termination or for any reason whatsover."

(14) The scheme makes two different patterns with regard to the periods, while defining basic wages. The first pattern is of the period falling prior to 31st December 1959. The second pattern commences from 1st January 1960. According to the service rendered in the first pattern the average of basic wages paid during the 12 months preceding 31st December 1959 is taken as basic wages. According to the second pattern the average of basic wages paid during the 12 months preceding the date of leaving service is worked out as basic wages. The I Party now wants that there should be a consolidated way of working of basic wages. According to it, the basic wages should be the last drawn pay. Now the main question would be as to whether the two patterns contemplated in the scheme, should be adhered to or as to whether the consolidated pattern proposed in the amendment should be allowed. The contention of the II Party is the basic wages as defined in the scheme is in confirmity with the recommendations of the first Central Wage Board for the Cotton Textile Industry. On page 23 of the Report of the First Central Wage Board, we find in para 110 recommendation to the following effect :

"We recommend that the amount of gratuity wherever calculated in terms of basic wages shall

be paid in terms of the existing basic wage upto 31st December 1959 ; but from 1st January 1960 the basic for such purpose will be that basic wage plus the increases given herein but excluding the dearness allowance consolidated."

After the coming into force of the Gratuity Act, gratuity is calculated not only on basic wage but also on the D.A. last drawn. The provisions of the Gratuity Act are more liberal in this respect. I do not think that any useful purpose will be served by allowing the proposed amendment. Secondly I find that the definition of basic wages in the scheme of the Mills is made on some basis and it may not be easily altered. I would therefore, find no good grounds to amend the definition of basic wages as appearing in the scheme.

(15) The third amendment sought in the scheme pertains to the definition of " continuous service ".

According to the scheme ' continuous service ' is to have the same meaning as given in the Industrial Disputes Act. Now the I Party wants continuous service should mean service continuous without a break not exceeding 6 months. It also wants that the service rendered in the various capacities namely as a probationer, apprentice, temporary or Badali should be counted as service. Continuous service as defined in Section 25-B of the Industrial Disputes Act means :

" uninterepted service including service which may be interupted merely on account of sickness or authorised leave or an accident or a strike which is not illegal or a lockout or cessation of work which is not due to any fault on the part of the workman."

(16) The I Party wants that continuous service should mean service continuous without a break not excee-

ding 6 months. It also wants that the service in various capacities namely as a probationer, apprentice temporary or badli should be counted as service. If the proposed amendment is accepted it will confront two difficulties. The I Party wants that even if there is break of service for a period not exceeding 6 months, then that period should be counted and condoned, no matter as to what is the reason for the absence. I do not think that such a latitude can be allowed to the workman while calculating continuous service. If the workman remains absent for 5 months 29 days and again joins service then according to him he should get benefit of the previous service. There is absolutely no reason as to why he should be allowed this benefit. Secondly the I Party wants that the period of apprenticeship should be counted as service. Apprentice is a learner of work. He has no claim on any permanent post. His period as apprentice cannot be counted while calculating continuous service. Hence the amendment in the alteration of definition of 'Continuous service' cannot be allowed.

(17) The I Party wants that at the end of clause 2 (f) of the scheme it should be added as :—

> "Provided the employee may change any nominee or may nominate more than one person."

Clause 2(f) of the scheme pertains to the nomination. The employee may nominate any person to receive the amount of gratuity payment under the scheme. The I Party wants that the nomination once made should not be allowed to be changed and more than one person should not be nominated. As a matter of fact if the nomination is allowed to be changed and if more than one person is allowed as nominee, it will be to the advantage of the employee. The workman will not be justified in restricting his own right. As present the scheme gives them a free hand to make nomination of more than one person and also it does not restrict for the change of nomination once made. Hence, I find that this proposed amendment is not in the first instance, beneficial

to the workman and secondly there are no reasons to allow it. It is therefore, disallowed.

(18) The I Party wants that Clause 4 of the Scheme should also be amended. Clause 4(a) of the scheme as it now stands, runs as :—

> "subject to the provisions of Clause 10 here under an employee as defined in clause 2(b) of this scheme shall be entitled to Gratuity as follows :
>
> a. On his death while in the service of the company or on termination of his services by the Company on grounds of being medically incapacitated for further service ;
>
> Half a month's basic wages for such completed year of continuous service, subject to a maximum of 15 months basic wages, to be paid to him or his nominee as the case may be"

The proposed amendment to the abovementioned rule runs as :—

> "On his death while in the service of the company or on termination of services by the Company for whatsoever reason or on his becoming physically or mentally incapacitated for further service or on his reaching the age of 60 years ;

(19) According to the proposed amendment, Gratuity is sought to be claimed even if an employee were to leave the service for whatsover reason. This may include even an act of misconduct or conviction by any criminal Court. If this amendment is allowed it would mean that even if an employee is dismissed from service by the Management for misconduct involving moral turpitude and even if he has been convicted for any offence in a Magistrate's

Court involving moral turpitude, he should be entitled to gratuity under the scheme. The management has objected to this amendment. We find that gratuity is paid to a workman for the good service he has rendered, to the employer. Gratuity is something which an employee wishes to obtain by rendering good and satisfactory service. As against it the I Party cannot be permitted to contend that even if the employee is found guilty of misconduct, involving moral turpitude, he should be paid the gratuity. It was however, contended on behalf of the I Party that under the Standing Orders even simple absence from duty without permission would constitute misconduct and this should not come in the way of the employee's getting the gratuity. I do appreciate the apprehension of the workman. I do not think that the Management would go to the extent of denying gratuity to a workman simply on the ground that he has remained absent for a particular period from duty wihout leave, and has thus lost lien over the appointment. But all the more I do not think that it would be necessary to amend clause 4(a) of the scheme by adding the phrase " for whatsoever reason ". If that amendment is allowed it will give a free hand to the employee. The next amendment in clause 4(a) is to the effect that the employee should be paid gratuity after he reaches the age of 60 years. There does not appear to be any restriction with regard to the age in the Standing Orders of the Company. Even if a person were to work beyond 60 years of age, he may do so provided the management wants to continue him in service and he fulfills the other conditions required. I do not think it necessary to impose restriction with regard to the age simply to make an employee eligible for getting gratuity. Hence, I do not find proper reasons for allowing the two amendments " for whatsoever reason " and " on reaching the age of 60 years " in clause 4(a) of the scheme.

(20) The most important amendment proposed is with regard to the quantum of gratuity which comes in clause 4(a). Accordi[illegible] the scheme an employee would be entitled to half a n[illegible]sic wages for each completed

years of continuous service and this is subject to a maximum of 15 months basic wages. But by the proposed amendment the I Party wants that the employee should get, for each completed year of service, one month's basic wages subject to a maximum of 20 month's basic wages. It is necessary to understand at this stage as to what is being paid to the employee as gratuity as at present and what better benefits they are claiming by the proposed amendment. The scheme has come into force from 1st April 1964. According to the scheme an employee who become eligible for payment or gratuity can get half a months basic wages for each completed year of continuous service. Half a month's basic wages would mean the basic wages of 13 days. I am informed that in this respect the working days of 26 days are calculated as one month. With effect from 1st January 1969, the II Party has adopted the recommendations of the Second Wage Board for Textile Industries. The Second Wage Board has recommended an increase of 25 per cent in the matter of payment of gratuity as per existing scheme and this would mean an additional wages of 3.25 days. As at present the II Party is paying wages of 16.25 days for every completed year of service. The claim of the 1st party is that wages of 26 days should be paid for every completed year of service. In order to scrutinise this claim we will have to compare the facilities given under the gratuity scheme of the company with the other schemes prevailing in similar industries in the region. Before doing so it may be mentioned that even the Gratuity Act which has come into force from 16th September 1972 allows only 15 days wages for every completed year of service. The Binny Mills Ltd., Bangalore pay as gratuity half a months' wages or salary for every completed year of service subject to a maximum of 15 months wages or salary. The Ramkumar Mills (P) Ltd., Bangalore pay gratuity equivalent to 15 days' wages for every completed year of service subject to a maximum of 12 months wages or salary. The Gokak mills Ltd., Gokak pay ¾th month's basic wages for every completed year of service for the period prior to 1st April 1963 and half month's basic wages thereafter subject to a

maximum of 15 months' wages. Nandi Hasbi Textile Mills (P) Ltd., Nargund pay gratuity on similar lines as the ones paid by the Gokak Mills. Sujatha Textile Mills Nanjangud pay gratuity to the extent of half month's basic wages for every completed year of service subject to a maximum of 15 months basic wages. The Shankar Textile Mills, Davangere pay gratuity at the rate of half month's basic wages for every completed year of service subject to a maximum of 15 months' basic wages. Similar is the case with Ganesha Textile Mills, Davangere, and Siddeshwar Textile Mills (P) Ltd., Davangere and also Chandrodaya Mills, Davangere. We thus find that almost all the mills referred above which are textile mills in the region are paying 15 day's basic wages as gratuity for every completed year of service and this is subject to a maximum of 15 month's wages. The Davangere Cotton mills gratuity scheme has made similar provision in its gratuity scheme. There are absolutely no reason as to why it should now be enhanced. On the other hand we find that with effect from 1st January 1969 the employees of the II Party are entitled to 25 days wages for every completed year of service. I would therefore, find that there are no good grounds to amend clause 4(a) of the scheme as to allow one month's basic wages for each completed year of service subject to a maximum of 20 months basic wages.

(21) The I Party wants that an explanation should be added to clause 4(a) by which an employee can get a medical certificate from any registered medical practitioner and that medical certificate can be deemed as sufficient for ascertaining whether the employee is physically or mentally incapacitated to continue in service. If the rule is so amended, then the employee may obtain a medical certificate from any R.M.O. and may try to claim benefit under it. It would neither be proper nor safe to act on a medical certificate issued by a registered medical practitioner. If at all a medical certificate is felt necessary then it will have to be restricted to the one issued by the District Surgeon. But as at present the necessity of a medical certificate is not felt.

The payment of gratuity Act has come into force. There is no question of any employee obtaining a medical certificate under the Gratuity Scheme of the Mills. I would therefore, find it not necessary to add the Explanation to clause 4(a) of the scheme as proposed by the I Party.

(22) The I Party wants that there should be some amendment in clause 4(b) of the scheme. Clause 4(b) runs as :

> "On voluntary retirement or resignation of an employee after 15 years continuous service in the company ;
>
> on the same scale as provided in para 46 of the scheme.

The proposed amendment is :

> for the words "resignation of an employee after 15 years continuous service" substitute "resignation or abandonment after 10 years of continuous service" and delet "on voluntary retirement".

(23) By the proposed amendment the I Party wants that the employee should be given an opportunity to abandon service after 10 years of continuous service and then claim benefits of gratuity. Clause 4(c) gives the details as to how the employee would be entitled to gratuity. If he puts in 5 to 10 years of continuous service, he would be entitled to ½ of gratuity amount and if he puts in 10 to 15 years he would be entitled to 3/4th of the gratuity amount and if he puts in service of 15 years he would be entitled to the full amount of gratuity. The I party wants that clause 4(c) should be deleted and instead clause 4(b) should be amended as mentioned above. I do not think it would be proper to allow gratuity to an employee if he abandone service after 10 years of continuous service. The gratuity

is paid for good and appreciable service. If the employee were to work in a factory or in a mill for 10 years and were to abandon the service simply for obtaining gratuity, I do not think that it would be a good precedent. On the other hand it may encourage the workers to leave one factory after 10 years of continuous service, obtain gratuity amount and there after seek service in some other factory. This will be to the detriment of the interests of the management. In the first instance I do not find any plausible reasons to allow an employee to get full amount of gratuity after he puts in 10 years of continuous service. Secondly it would not be proper to allow an employee to abandon service for claiming gratuity. Hence, the proposed amendment to clause 4(b) of the scheme is rejected.

(24) One of the demands of the I Party is that clause 4(c), 5, 6 and 8 of the Gratuity Scheme should be deleted. Clause 4(c) deals with regard to the amounts of gratuity payable to an employee whose services are terminated on grounds other than the ones mentioned in Clause 4(a). It mentions that an employee whose services are terminated under the above condition would be entitled to half of the amount of Gratuity if he puts in 5 to 10 years of continuous service, 3/4th of gratuity amount if he puts in 10 to 15 years of continuous service and full gratuity amount after completion of 15 years of service. The I Party wants that this distinction should be removed and an employee should be allowed full amount of gratuity if he puts in 10 years of continuous service. Clause 4(c) deals with regard to the amount of gratuity payable to a workman whose services have been terminated on grounds other than the ones mentioned in clause 4(a). It is quite necessary that there should be restriction on an employee getting gratuity amount. Gratuity is paid to a workmen for his good and appreciable service. Similarly it appears to be necessary that there should be some sort of incentive given to the workmen to continue in service so that he may get a larger amount of gratuity. That is why gradations are made with regard to the years of continuous service in clause 4(c). It this

gradation is removed and if a workman were to get full amount of gratuity, no sooner he puts in 10 years of continuous service, it is quite likely that every worker may try to get out of service after he completes 10 years of service, get the gratuity and go to some other concern for seeking another job. This will not be a healthy trend in Industrial concerns both from the point of workmen and the management. It is therefore, necessary that the gradation mentioned in para 4(c) which acts as an incentive to the workmen should be kept up.

(25) Clause (5) of the scheme mentions as under:

"Gratuity payable under this scheme is subject to deduction of any amount received by the employee, as *exgratia* payment, retrenchment compensation or compensation in pursuance of any agreement recommendation, or award, in respect of termination of service."

The I Party wants that the above clause should be deleted. If a person is discharged or dismissed from service of if he is retrenched or his services are otherwise terminated it is quite possible that he may get some retrenchment compensation or compensation in pursuance of any agreement, or award. The above mentioned clause mentions that the workman whose services are terminated, while being paid gratuity, the amounts of retrenchment compensation and such other compensation paid to him in respect of termination of service should be deducted. But the I Party wants that the workman should get the compensation and such other amounts and in addition should also get the full gratuity amount. This does not appear to be fair nor proper. While paying gratuity, the retrenchment compensation or any compensation paid to the workmen should be deducted. Clause (5) of the scheme cannot be deleted.

(26) The I Party has also prayed for the deletion of clause (6) of the scheme. Clause (6) runs as:—

"Gratuity shall not be payable to an employee in the following circumstances:

(i) Dismissal for misconduct.

(ii) Termination of service for any reason involving moral turpitude.

The I Party wants that even if a workman is dismissed from service for misconduct and even if his services are terminated for any reason involving moral turpitude, he should be paid the full amount of gratuity. If a particular workman behaves in a way which involves loss of products and reputation of the company and if for that purpose he is dismissed from service, it would not be proper that he should be paid gratuity in such cases. That is why clause (6) mentioned above has come into existence. There are no reasons to delete clause (6).

(27) It is also the contention of the I Party that clause (8) of the scheme should be deleted. Clause (8) of the scheme runs as :

"Payment of Gratuity shall be subject to deduction on account of any amounts due by the employee to the company."

According to the I Party the employee should get gratuity, without deducting the amount which he owes to the company. In other words the I Party wants that the full gratuity amount due to an employee should be paid to him and if any amounts are due by the employee to the company, then the company should take such other steps against him as are allowed under law. If an employee owes certain amounts to the company, it would be quite convenient for the company to deduct this amount while paying gratuity. If not, the company will have to go to a court of law for recovering the amounts due by the employee. Clause (8) cannot therefore, be deleted. Considering all these I find that there is no substance in the contention of the I Party that clause 4(c), 5, 6 and 8 of the scheme should be deleted. These clauses cannot be deleted and the request of the I Party cannot be allowed.

(28) The II Party has also raised a contention that it cannot bear the financial burden, if the amendments are allowed. I have already discussed above that the Payment of Gratuity Act has come into force. If the demands of the workmen are allowed from the date of award then the award cannot give any benefit to the workmen for the reason that even prior to the award the Payment of Gratuity Act has come into force. It is only if the demands are granted from the date of the said demands, the question of the benefit of of the amended scheme would arise only with regard to those who would be entitled for gratuity during the period from 1st August 1967 to 16th September 1972. The contention of the II Party is that its financial position has not been sound and that it is not in a position to bear any additional burden. The question of financial burden is not a recurring one in this aspect. Even if the amendments asked for by the I Party had been allowed in *toto,* it is only such of the persons who have retired from service or whose services were terminated prior to 16th September 1972, who could take advantage of the proposed amendments. That number might evidently be small. Since the financial aspect is not of a material nature I do not think it necessary to disscuss that aspect and record a finding about it.

(29) The contention of the II Party is that once the Government had declined to refer the dispute for adjudication and on a later consideration they have passed orders referring it for adjudication. It is on this count that the II Party sought to argue that the present reference is not maintainable and as such this Tribunal has no jurisdiction. The Government have powers to refer a dispute for adjudication even on an earlier occasion it had declined to do so. This will not make the reference defective. The present reference is proper and maintainable. This Tribunal has jurisdiction to adjudicate upon the dispute. The question of additional financial liability is not material for the reason that even before the award is passed the Payment of Gratuity Act has been passed and has come into force. The definition of continuous service in the scheme is not

unreasonable. Clauses 4, 5 and 6 of the existing scheme are in line with the usual pattern of gratuity. They are not unfair or unjust. There is absolutely no call for amendment of the existing scheme of gratuity. I answer issues 1 to 5 accordingly. The point of dispute is answered by recording a finding that the I Party Association is not justified in demanding the amendment of the Gratuity scheme in force in the Mills. In the result, I find no merit in the reference and it is hereby rejected. There shall be no order as to costs.

K. N. PATIL,

Presiding Officer.
Additional Industrial Tribunal, Bangalore.
20-11-1972.

ORDER

Bangalore, dated 1st December 1972.

S.O. 229.—WHEREAS by State Government Order No. FCL 118 LLD 70 dated 24th March 1970 the Industrial Dispute between the workmen and the management of Davangere Cotton Mills Limited, Davangere, was referred to the Additional Industrial Tribunal, Bangalore for adjudication.

AND, WHEREAS the Additional Industrial Tribunal has submitted to the State Government its award in respect of the said Industrial Dispute.

NOW, THEREFORE, in exercise of the powers conferred by section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), the Government of Mysore are pleased to direct the publication of the said award as above, in the *Mysore Gazette*.

[No. FCL 239 LLA 72].

By Order and in the name of the Governor of Mysore,

ANIRUDHA DESAI,
Under Secretary to Government,
Food, Civil Supplies and Labour Department.